



Memorandum

Date August 16, 2002
From Regional Inspector General
for Audit Services
Subject Review of Medicare Payments for Incarcerated Beneficiaries in Ohio
(A-05-02-00028)
To Dorothy Burk Collins, Regional Administrator
Centers for Medicare & Medicaid Services

Attached are two copies of the U.S. Department of Health and Human Services, Office of Inspector General, Office of Audit Services' report entitled "Review of Medicare Payments for Incarcerated Beneficiaries in the State of Ohio." This review was requested by Senator Grassley at the April 25, 2001 Senate Finance Committee hearing held to address improper payments in Federal programs. Should you have any questions or comments concerning the matters commented on in this report, please let me know or call Frank Polasek, Audit Manager at (312) 353-7896.

To facilitate identification, please refer to Common Identification Number A-05-02-00028 in all correspondence relating to this report.

Paul Swanson

Attachments – as stated



Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**REVIEW OF MEDICARE PAYMENTS
FOR INCARCERATED BENEFICIARIES
IN THE STATE OF OHIO**



JANET REHNQUIST
Inspector General

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At the request of Senator Grassley, Senate Finance Committee, we undertook a review of Medicare payments for services provided to incarcerated beneficiaries. The objective of our review was to determine whether Medicare fee-for-service claims paid in 10 States during the 3-year period of January 1, 1997 through December 31, 1999 were in compliance with Federal regulations and Centers for Medicare & Medicaid Services (CMS) guidelines. The State of Ohio was 1 of the 10 States selected for review.

Senator Grassley's request was made at the April 25, 2001 Senate Finance Committee hearing held to address improper payments in Federal programs. At this hearing, we released our report entitled, *Review of Medicare Payments for Services Provided to Incarcerated Beneficiaries*, in which we found that the Medicare program had paid \$32 million in fee-for-service benefits on behalf of 7,438 incarcerated beneficiaries during the 3-year period mentioned above. Generally, no Medicare payments should be made when a beneficiary is in State or local custody under a penal authority, since the State or other government component is responsible for providing medical care. This is a rebuttable presumption that may be overcome only if a State or local law exists requiring incarcerated beneficiaries to repay the cost of medical services and the incarcerating entity enforces this requirement by diligently pursuing collection.

In order to determine the extent of improper Medicare payments made on behalf of incarcerated beneficiaries, we reviewed a randomly selected statistical sample of 100 claims from each of 10 States including Ohio. The States selected represented about 70 percent of the \$32 million of claims for services in the 3-year period covered in our April 25, 2001 report. We found that all 100 sample claims in Ohio were appropriate. The sample included 92 claims for beneficiaries in psychiatric hospitals operated by the Ohio Department of Mental Health. We determined that these beneficiaries did qualify for Medicare coverage because under State law, the beneficiaries were responsible for repayment of medical costs and the State did pursue collection. The final eight claims in our sample were also allowable because the beneficiaries were not incarcerated on the day of the medical service.



As a result of our April 25, 2001 report, CMS plans to establish an edit in its Common Working File (CWF) that will deny claims for incarcerated beneficiaries, unless the supplier or provider uses a modifier on the claim to certify that the State or local government has met the conditions for Medicare payment.

BACKGROUND

Under current Federal law and regulations, Medicare payments made on behalf of beneficiaries in the custody of law enforcement agencies are generally unallowable except when certain requirements are met.

Under sections 1862(a)(2) and (3) of the Social Security Act, the Medicare program will not pay for services if the beneficiary has no legal obligation to pay for the services or if the services are paid directly or indirectly by a government entity. Furthermore, regulations at 42 CFR 411.4 states that:

(a) General rule: Except as provided in 411.8(b) (for services paid by a government entity), Medicare does not pay for service if: (1) the beneficiary has no legal obligation to pay for the service; and (2) no other person or organization (such as a prepayment plan of which the beneficiary is a member) has a legal obligation to provide or pay for that service.

(b) Special conditions for services furnished to individuals in custody of penal authorities. Payment may be made for services furnished to individuals or groups of individuals who are in the custody of the police or other penal authorities or in the custody of government agency under a penal statute only if the following conditions are met:

(1) State or local law requires those individuals or groups of individuals to repay the cost of medical services they receive while in custody.

(2) The State or local government entity enforces the requirement to pay by billing all such individuals, whether or not covered by Medicare or any other health insurance, and by pursuing collection of the amounts they owe in the same way and with the same vigor that it pursues the collection of other debts.

Under these criteria, Medicare payments on behalf of prisoners in custody of Federal authorities are not allowable since these prisoners by definition are not subject to State or local laws regarding the terms of their care. For prisoners in custody of State or local government entities, the component operating the prison is presumed to be responsible for the medical needs of its prisoners. This is a rebuttable presumption that must be affirmatively overcome by the initiative of the State or local government entity. There must be a law requiring all individuals or groups of individuals in their custody to repay the cost of medical service. In addition, the entity must establish that it enforces the requirement to pay by billing and seeking collection from all individuals or groups of

individuals in custody, whether insured or uninsured, with the same vigor it pursues the collection of other debts. Guidelines in CMS contractor manuals state the government entity must enforce the requirement to pay and seek collection from all individuals in custody with the same legal status.

Section 202(x)(1)(A) of the Social Security Act requires the Social Security Administration (SSA) to suspend Old Age and Survivors and Disability Insurance (i.e., Social Security benefits) to persons who are incarcerated. To implement this requirement, SSA, with the assistance of the Federal Bureau of Prisons (FBOP) and various State and local entities, developed and maintains a database of incarcerated individuals.

The Office of Inspector General matched a file of incarcerated Medicare beneficiaries provided by SSA to CMS's National Claims History file for claims paid between January 1, 1997 and December 31, 1999. Based on the matching, we compiled a database of claims paid on behalf of beneficiaries whose SSA payments had been suspended due to incarceration on the dates of service. We created a listing for Ohio that included 12,195 claims totaling \$2,237,619. Using the Ohio listing, we selected a random statistical sample of 100 fee-for-services claims (totaling \$12,774) paid during the January 1, 1997 through December 31, 1999.

OBJECTIVE, SCOPE AND METHODOLOGY

Our objective was to determine whether Medicare payments for services provided to beneficiaries reported to be incarcerated during the period January 1, 1997 through December 31, 1999 were in compliance with regulations and CMS guidelines. To achieve our objective, we:

- Reviewed applicable Federal laws and regulations, Medicare reimbursement policies and procedures, and pertinent provisions of the Social Security Act pertaining to incarcerated beneficiaries.
- Reviewed applicable Ohio laws and regulations pertaining to health care cost liabilities for incarcerated beneficiaries and other individuals in the penal system.
- Spoke with various State officials including individuals from the Ohio Departments of Rehabilitation and Correction and Mental Health.
- Reviewed a sample of non-Medicare claims to determine if collection procedures were adequate and applied uniformly for all claims.
- Checked the FBOP database to see if any beneficiaries, whose incarceration status on the date of service could not be determined, were confined at a Federal prison.

We conducted our review in accordance with generally accepted government auditing standards. The objectives of our audit did not require an understanding or assessment of

the overall internal control structures of the suppliers and providers. Our field work was performed during November 2001 through May 2002 at the Ohio Department of Mental Health offices, various county jails and our field office in Columbus, Ohio.

RESULTS OF AUDIT

We found that all 100 claims sampled in the State of Ohio were appropriate. The sample included 92 claims for beneficiaries in psychiatric hospitals operated by the Ohio Department of Mental Health. We determined that these beneficiaries did qualify for Medicare coverage. The final eight claims in our sample were also allowable because the beneficiaries were not incarcerated on the day of the medical service.

Under current CMS guidelines, the Medicare program will be responsible for coverage as long there is a law requiring the individual in custody to pay for medical services and the government entity enforces the requirements for all individuals in custody with the same legal status. Ohio Revised Code 5121 provides that beneficiaries in the custody of the Department of Mental Health are responsible for the costs of medical care regardless of legal status. Ohio Revised Code 131.02 states that delinquent accounts will be turned over to the Attorney General for collection.

Department of Mental Health records were reviewed for the identified psychiatric patients. The records indicate that 68 of the 92 claims were for beneficiaries found not guilty by reason of insanity and 24 claims were for beneficiaries incompetent to stand trial. Under Ohio Law all of these beneficiaries were responsible for the costs of their medical care. We also reviewed the collection procedures at the Department of Mental Health and found that they were adequate and applied uniformly to all individuals. Based on these conclusions we believe that Medicare payment of the 92 claims was allowable and consistent with Medicare reimbursement requirements.

The eight claims in our sample for non-incarcerated beneficiaries included four claims for a single beneficiary who had voluntarily committed herself to a State psychiatric hospital. Since the beneficiary was not incarcerated under a penal statute, her Medicare claims were allowable. The remaining four claims were for beneficiaries who were not in the custody of any penal authority at the time of the medical service.

CONCLUSIONS AND RECOMMENDATIONS

Our sample included 92 claims for beneficiaries in State mental facilities and 8 claims for beneficiaries who were not in the custody of any authority. We concluded that all 100 claims were allowable, so we are making no recommendations based on our review in the State of Ohio.



Paul Swanson
Regional Inspector General
for Audit Services